

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Village of Merrilan for the Repair of the Public Crossing of the Union Pacific Railroad Co. Tracks with 5 Streets in the Village of Merrilan, Jackson County

9040-RX-1225

FINAL DECISION

On May 10, 2006, the Village of Merrilan filed a complaint with the Office of the Commissioner of Railroads (OCR) under §86.12, Stats., that the Union Pacific Railroad Co. (UP) has failed to maintain in good condition for public travel the public crossing of its tracks with 5 streets in the Village of Merrilan, Jackson County.

The crossings are:

<b>Street</b>	<b>Crossing no.</b>
Merrill Street	184 023P
Main Street	184 024W
STH 95 (Pearl Street)	184 025D
Mill Street	184 026K
Lower Lake Drive	184 027S

The Village states that it served a resolution requiring the repairs more than 30 days before filing the complaint with the Office of the Commissioner of Railroads.

Pursuant to due notice, public hearing was held in this matter on July 20, 2006 in Merrilan, Wisconsin with hearing examiner Douglas S. Wood presiding.

On August 10, 2006, the hearing examiner issued a proposed decision. The OCR received no comments on the proposed decision. The Commissioner adopts the proposed decision as final without change.

Appearances:

**Parties**

Village of Merrilan, Petitioner  
by  
Randall J. Ransom  
Village President  
306 Oakwood Avenue  
Merrilan, Wisconsin 54754

As Interest May Appear:

Union Pacific Railroad Co.  
by  
James E. Larson  
Manager of Track Maintenance  
1428 Spooner Avenue  
Altoona, WI 54720

#### Findings of Fact

#### THE COMMISSIONER FINDS:

The railroad currently operates 4 through train movements per day over each crossing location at a maximum speed of 40 mph.

#### **Merrill Street                      184 023P**

Merrill Street is a 2-lane roadway and intersects the tracks at an angle of about 50°. The crossing consists of one main line track and one siding.

Merrill Street carried 132 ADT (average daily traffic) in 1997. The speed limit on Merrill Street is 25 mph.

The main line crossing is a full timber plank crossing and is in adequate condition, except that it needs some asphalt patching next to the timber planks. The sidetrack crossing is an asphalt and three-rail or mud-rail crossing in poor condition for highway travel. The asphalt is in poor condition with potholes. Drivers sometimes veer left or right to avoid the worst parts of the crossing. The crossing needs replacement.

The crossing also needs temporary repairs immediately and routinely until the crossing is replaced.

Under §86.12 Wis. Stats., the railroad bears an obligation to keep all highway/rail crossings in good condition and repair for public travel. The railroad has failed to do so at this crossing. The crossing is at the end of its useful life and requires complete renewal.

#### **Main Street                      184 024W**

Main Street is a 2-lane roadway and intersects the tracks at an angle of about 40°. The crossing consists of one main line track and one wye track.

Main Street carried 222 ADT (average daily traffic) in 1997. The speed limit on Main Street is 25 mph.

The wye track crossing is in adequate condition. The main line crossing is a full timber plank

crossing and is in poor condition for highway travel. The crossing surface is pitted with gaps in the timber that has deteriorated. Drivers sometimes veer left or right to avoid the worst parts of the crossing. The crossing needs replacement.

The crossing also needs temporary repairs immediately and routinely until the crossing is replaced.

The railroad has failed to maintain this crossing in good condition and repair. The crossing is at the end of its useful life and requires complete renewal.

**STH 95 (Pearl Street)                      184 025D**

STH 95 (Pearl Street) is a 2-lane roadway and intersects the tracks at an angle of about 60°. The crossing consists of one main line track.

STH 95 (Pearl Street) carried 1750 ADT in 1998. The speed limit on STH 95 (Pearl Street) is 25 mph.

The crossing is in poor condition for highway travel. The crossing surface is constructed with a combination of timber-plank and asphalt and three-rail and asphalt. The crossing needs replacement.

The railroad has failed to maintain this crossing in good condition and repair. The crossing is at the end of its useful life and requires complete renewal.

The Wisconsin Department of Transportation plans to reconstruct STH 95 in Merrilan in 2007. That project will include provisions for the railroad to replace the crossing. Consequently, the OCR is not ordering the repair of the crossing at this time. However, the crossing does need temporary repairs immediately and routinely until the crossing is replaced.

**Mill Street                                      184 026K**

Mill Street is a 2-lane roadway and intersects the tracks at an angle of about 60°.The crossing consists of one main line track.

Mill Street carried 275 ADT (average daily traffic) in 1997. The speed limit on Mill Street is 25 mph.

The crossing is in poor condition for highway travel. The crossing surface is constructed with timber-plank and asphalt. Mill Street is in the 'best' condition of this group of crossings. The crossing still needs replacement.

The railroad has failed to maintain this crossing in good condition and repair. The crossing is at the end of its useful life and requires complete renewal. The order allows the UP to repair this crossing in 2008, but it may also do so earlier.

**Lower Lake Drive                              184 027S**

Lower Lake Drive is a 2-lane roadway and intersects the tracks at an angle of about 60°. The crossing consists of one main line track.

Lower Lake Drive carried 355 ADT (average daily traffic) in 1997. The speed limit on Lower Lake Drive is 25 mph.

The crossing is in poor condition for highway travel. The crossing surface is constructed with timber-plank and asphalt. The timbers and asphalt are badly deteriorated and sunken with gaps in the surface. Drivers veer left or right to avoid the holes. This crossing is in the worst condition of this group of crossings. The crossing needs replacement.

The crossing also needs substantial immediate repairs. At the hearing the UP representative testified that the railroad would install a new full plank surface during the 2006 construction season. He did not think the subsurface needed to be replaced.

The railroad has failed to maintain this crossing in good condition and repair. The crossing is at the end of its useful life and requires complete renewal.

#### Ultimate Conclusions on the Issues

##### THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has failed to maintain the crossings at-grade of Merrill Street, Main Street, STH 95 (Pearl Street), Mill Street, and Lower Lake Drive with its tracks in good condition and repair for public travel in the Village of Merrilan, Jackson County.

#### Conclusion of Law

##### THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §86.12, Wis. Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

#### Order

##### THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Co.** shall **temporarily** repair the crossings at-grade of **Merrill Street (crossing no. 184 023P), Main Street (crossing no. 184 024W), and STH 95 (Pearl Street) (crossing no. 184 025D)** with its tracks by patching asphalt and replacing timbers and other crossing elements as needed in the Village of Merrilan, Jackson County by **October 31, 2006**.

2. That the **Union Pacific Railroad Co.** shall repair the crossing at-grade of **Lower Lake Drive (crossing no. 184 027S)** with its tracks by fully renewing the crossing surface in

the Village of Merrillan, Jackson County by **October 31, 2006**. That the **Union Pacific Railroad Co.** shall coordinate the timing of the necessary roadway closure with the Village of Merrillan to allow adequate advance notice to residents.

3. That the **Union Pacific Railroad Co.** shall repair the crossings at-grade of **Merrill Street (crossing no. 184 023P) and Main Street (crossing no. 184 024W)** with its tracks by fully renewing the crossing in the Village of Merrillan, Jackson County by **June 30, 2007**.

4. That the **Union Pacific Railroad Co.** shall repair the crossing at-grade of **Mill Street (crossing no. 184 026K)** with its tracks by fully renewing the crossing in the Village of Merrillan, Jackson County by **June 30, 2008**.

5. That jurisdiction is retained.

Dated at Madison, Wisconsin, \_\_\_\_\_ (August 29, 2006) \_\_\_\_\_.

By the Office of the Commissioner of Railroads.

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Rodney W. Kreunen  
Commissioner of Railroads

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